IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2549 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BECHARBHAI PURUSHOTTAMDAS JOSHI - Petitioner(s)

Versus

PRAVINBHAI DEVAJIBHAI PARMAR & 3 - Respondent(s)

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Appearance :

MR KASHYAP R JOSHI for Petitioner(s) : 1,

MR AR MAJMUDAR for Respondent(s) : 1 - 4.

MR NK MAJMUDAR for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 26/09/2006

ORAL JUDGMENT

1 Rule. Mr.Suthar for Mr.N.K.Majmudar appears and waives service on behalf of the respondents. By consent of the learned Advocates appearing on behalf of the respective parties the matter is taken up for final hearing.

2 This petition has been filed under Article 227 of the Constitution by the plaintiff in Regular Civil Suit No. 142 of 2001 challenging order dated 9.1.2006 made by the Court of Principal District Judge, Bharuch in Misc. Civil Appeal No. 48 of 2004.

3 It is an accepted fact that the plaintiff and the defendants entered into an agreement to sell the suit property on 17.11.1994 accompanied by payment of sum of Rs.10,000/-, followed by payment of Rs.10,000/- on 30.9.1995 and Rs.15,000/- on 17.11.1995. Thereafter, it appears there was exchange of correspondence in form of notices between the parties. Ultimately the plaint came to be filed on 4.5.2001 accompanied by application exhibit 5 for interim injunction. The same came to be granted by the Trial Court on 10.12.2001.

4 The defendants challenged the order made by the Trial Court by way of Misc. Civil Appeal No. 48 of 2004 which came to be allowed by the impugned order dated 9.1.2006.

5 Heard learned Advocates appearing for the respective parties. The learned Advocate for the plaintiff has submitted that if the order made by the Appellate Court is permitted to operate, it might result in an irreversible situation in case the defendants part with the suit property in favour of third party, and the plaintiff, even if he ultimately succeeds, will be left with a paper decree and shall not be able to enjoy the fruits of litigation. He has therefore urged that the order of the Appellate Court be quashed and set aside and that of the Trial Court be restored.

6 As against that Mr.Suthar appearing on behalf of the defendants has submitted that the order made by the Appellate Court is just and proper and no interference is called for. That the plaintiff is non-agriculturist and by virtue of provisions of Section 63 of The Bombay Tenancy And Agricultural Lands Act, 1948 there cannot be a transfer of agricultural land in favour of non-agriculturist. That even otherwise the suit is barred by limitation as rightly held by the Appellate Court.

7 As can be seen from the order made by the Appellate Court it has proceeded on the basis of description in the

agreement to sell wherein the plaintiff has described itself as partner of Gayatri Builders, a partnership firm. However, in paragraph No.3.1 of the petition a statement is made to the effect that Becharbhai Purshottam Joshi is also an agriculturist. In the circumstances, the Trial Court has rightly exercised discretion in favour of the plaintiff and the Appellate Court was in error in proceeding only on the basis of the description stated in the agreement to sell. However, without recording any opinion in relation to this issue, suffice it to state that prima facie whether provisions of Section 63 of the Tenancy Act are applicable or not would be a question which will have to be decided when the suit goes to trial considering the averment made on oath in paragraph No.3.1 of the petition; and the description in the agreement.

8 In the circumstances, without entering into the merits of the dispute between the parties which can be decided when the evidence is led at the trial the order made by the Appellate Court is quashed and set aside and the order made by the Trial Court is restored. In the result the petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J.)

m.m.bhatt